



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 6, 1998

Mr. Helmut (Hal) Talton
Associate General Counsel
Texas Department of Transportation
Dewitt C. Greer State Highway Bldg.
125 E. 11th Street
Austin, Texas 78701-2483

OR98-2624

Dear Mr. Talon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID #s 119561, 119714, and 119819.

The Department of Transportation (the "department") received three requests for information relating to one specific job posting. You state that you will release most of the requested information. However, you claim that the interview questions and predetermined answers, the criteria used to rate those answers, and applicants' responses are excepted from disclosure under section 552.122 of the Government Code. You indicate that the department will use the submitted information to evaluate applicants in future interviews. We have considered the exception you claim and reviewed the submitted representative samples of documents.¹

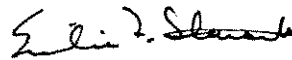
Section 552.122(b) of the Government Code excepts from disclosure a test item developed by a licensing agency or governmental body. "Test item" includes "any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." Open Records Decision No. 626 at 6 (1994). An evaluation does not necessarily constitute a test, however, simply because it is labeled as a test, because it is comprised of questions and answers, or because it involves some sort of scoring system. *Id.* We agree that portions of the information involve an evaluation of applicants' knowledge in a particular

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

area. These portions are thus "test items" excepted from disclosure by section 552.122(b). However, we do not believe that other portions of the information are "test items." In particular, we do not believe the following questions are "test items:" number 1, number 2, number 3, number 4, the first question in number 5, number 6, number 7, number 9, number 10, and number 12. Accordingly, you may not withhold the information we do not consider to be "test items" for purposes of section 552.122(b).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# s 119561, 119714, and 119819

Enclosures: Submitted documents

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